



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 300  
DENVER, COLORADO 80202-2466  
<http://www.epa.gov/region08>

  
1765121 - R8 SDMS

July 18, 2001

8ENF-L

Marcus A. Martin, Esq.  
Highland Environmental Management  
1630 30<sup>th</sup> Street, Suite 598  
Boulder, CO 80301

Re: Request for Information Pursuant to Section 104 of  
CERCLA for the Rico-Argentine Site Located Near  
Rico, Colorado - Your Letter of July 11, 2001

Dear Mr. Martin:

This responds to your letter of July 11, 2001 wherein you summarize both NL Industries Inc.'s position with respect to the adequacy of its response to EPA's March 7, 2001 request for information pursuant to Section 104 of CERCLA and our discussion on the phone on Wednesday of last week, July 11, 2001. This letter also clarifies a couple of misunderstandings reflected in that letter.

In your letter, you state that I "acknowledged that NL has complied with its statutory obligation by producing all documents within its possession." What I actually said was that NL is obligated to fully respond to the request for information by providing a narrative response to the questions posed and by providing the documents requested. I explained that, among other sources of information, there may be NL employees that possess responsive information that may not be reflected in documents in NL's possession. Making inquiry to seek out that information is required under the request for information. You also state in your letter that we "agreed that NL is not required to quote from or characterize information in the documents produced." While I agreed that it would not be beneficial to quote from documents, I did state that EPA expected a narrative response to the questions contained in the request for information. Such responses are typically summaries of the information acquired by the respondent to the request for information, whether the source of that information is documentary or otherwise.

With respect to point number 4 in your letter, while I reiterated that the request for information inquired into the relationship between the St. Louis Smelting and Refining Company and the National Lead Company, the request for information seeks other information as well. A complete response to all questions is required. On the point of the relationship between the St.



Printed on Recycled Paper

Louis Smelting and Refining Company and the National Lead Company (subsequently renamed NL Industries, Inc.), records acquired by EPA show that the St. Louis Smelting and Refining Company was a wholly-owned subsidiary of National Lead throughout the St. Louis Smelting and Refining Company's years of operation at Rico. These documents also show that when National Lead liquidated the St. Louis Smelting and Refining Company in 1948, all of the property of the St. Louis Smelting and Refining Company was transferred to National Lead subject to all liabilities and obligations of the St. Louis Smelting and Refining Company and that such liabilities and obligations were assumed by National Lead. Documents also show that after the liquidation, the St. Louis Smelting and Refining Company operated as a division of National Lead for many years. I trust that NL does not take issue with this recitation of the facts.

Based on (1) your assertion that NL has conducted a thorough search of records in its possession that might be responsive to the request for information and has provided those records, (2) your statements to me regarding the relationship between the St. Louis Smelting and Refining Company and the National Lead Company, and (3) your statements on the phone and in your letter regarding NL's intent to cooperate with EPA in addressing the untreated mine tunnel discharges at Rico, I agreed that EPA would take no further action regarding NL's response to the request for information at this time. Should discussions regarding an appropriate response at Rico not move forward expeditiously and favorably, EPA will reconsider its position with regard to the request for information.

With respect to addressing the discharges at the Rico-Argentine Site, it was encouraging to hear from you that NL desires to work with EPA in formulating a response at the Site. As we discussed, EPA has had discussions with ARCO which initially also expressed a willingness to cooperate. However, in light of a conversation I had with Bill Duffy shortly after my conversation with you, it is no longer clear that ARCO is willing to move forward on this matter cooperatively. I expect to hear more from Bill Duffy on this matter this week.

As you know, the United States and the State of Colorado are presently engaged in litigation with the Rico Development Corporation ("RDC") and its former shareholders wherein plaintiffs seek injunctive relief and civil penalties for Clean Water Act violations at the Rico-Argentine mine and cost recovery under CERCLA for an emergency response action performed by EPA at the Site in April 2000. Based on information the plaintiffs have acquired during the course of that litigation regarding the defendants' financial resources, it is unlikely that there will be sufficient assets available to perform the work needed at the mine. Further, RDC is dissolved, one of the two shareholder defendants recently passed away and the remaining shareholder defendant is in his eighties. Accordingly, it will be incumbent upon ARCO, NL and Rico Properties (the purchaser of the mine property from RDC) to fund some or most of the work at the Site and to arrange for treatment of the mine effluent discharge for as long as necessary. EPA further expects that any agreement worked out between the parties will be documented in an instrument that will be legally enforceable by EPA, i.e., in an administrative order on consent or a judicial consent decree. If the parties are unable to reach a negotiated agreement, EPA will



*Printed on Recycled Paper*

evaluate its enforcement options.

Thank you for taking the time to talk with me on the phone last Wednesday. I will contact you soon regarding the meeting I am planning for the week of August 13. If you have any questions, please feel free to call me at (303) 312-6916.

Sincerely,

*Sheldon H. Muller*

Sheldon H. Muller  
Enforcement Attorney

cc: David Broste - EPA  
Robert Homiak - DOJ  
Annette Quill - CO AG  
Tony Trumbly - CO AG  
Stephen Taylor - US Attorney's Office

